

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHANAY JENKINS,

Plaintiff,

-against-

THE PEOPLE OF THE STATE OF NEW YORK,

Defendant.

-----x
MEMORANDUM AND ORDER
10-CV-4411 (RRM)

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ JAN 13 2011 ★

MAUSKOPF, United States District Judge:

BROOKLYN OFFICE

Plaintiff Chaney Jenkins filed this *pro se* action under 42 U.S.C. § 1983. The Court grants plaintiff's request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. For the reasons set forth below, this action is dismissed.

DISCUSSION

Plaintiff brings this action seeking to withdraw his May 28, 1991 guilty plea to second degree murder in Kings County Supreme Court. In sum and substance, plaintiff's complaint is a point by point recitation of the deficiencies in his state court criminal case, state court appeal and post-conviction proceedings. Plaintiff is now on parole supervision. Compl. at 7.

Section 1983 provides a civil claim for damages against any person who, acting under color of any state law, deprives another of a federal constitutional or statutory right. *Thomas v. Roach*, 165 F.3d 137, 142 (2d Cir. 1999). Here, plaintiff "requests that this Honorable Court grant the relief claim and Plea under indictment Number 254/90 should be withdrawn." *Id.* As such, a habeas corpus petition is the proper procedure for plaintiff to obtain the relief he seeks,

not a § 1983 action.¹ See *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Amaker v. Weiner*, 179 F.3d 48, 52 (2d Cir. 1999); *Abdul-Hakeem v. Koehler*, 910 F.2d 66, 68-69 (2d Cir. 1990); *Clarke v. Lapera*, No. 05-CV-2922, 2005 WL 2445470, *3 (E.D.N.Y. Sept. 29, 2005).²

CONCLUSION

Accordingly, plaintiff's complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *informa pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

s/Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
United States District Judge

DATED: Brooklyn, New York
January 31 2011

¹ The Court notes that parole satisfies the "in custody" requirement of § 2254 petitions. See *Earley v. Murray*, 451 F.3d 71, 75 (2d Cir. 2006).

² The Court further notes that plaintiff previously challenged the same conviction by filing a petition seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. That petition was denied in October of 2003. *Jenkins v. Beaver*, No. 01-CV-0483 (JBW), 2003 WL 23185773, at *5 (E.D.N.Y. Oct. 28, 2003). In May of 2004, the United States Court of Appeals for the Second Circuit issued a mandate dismissing petitioner's appeal. *Jenkins v. Beaver*, No. 03-2909 (2d Cir. May 14, 2004). Plaintiff is advised that before he files a second or successive § 2254 petition, he must move in the United States Court of Appeals for the Second Circuit for permission to pursue such an application. See 28 U.S.C. § 2244(b)(3)(A).